PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

Application No.	:	10/522,586
Confirmation No.	:	5634
Applicant	:	Andrea Seger
Filed	:	26 Jan. 2005
Title	:	Method for updating device description for field devices of process automation technology
TC/A.U.	:	8146
Examiner	:	S. Taha
Docket No.	:	SEGE3003/FJD
Customer No.	:	23364

BRIEF ON APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22202-3514

Sir:

INTRODUCTORY COMMENTS

Pursuant to the provisions of 37 CFR 41.37, submitted herewith is Applicant/Appellant's Brief on Appeal along with the required fee.

Any additional fees necessary for this appeal may be charged to the undersigned's Deposit Account No. 02-0200.

REAL PARTY IN INTEREST
(37 CFR 41.37(c)(1)(i)

The real party in interest is Applicant/Appellant's assignee, Endress + Hauser GmbH + Co. KG . The assignment was recorded on October 7, 2005 at Reel 016859 and Frame 0126.

RELATED APPEALS AND INTERFERENCES
(37 CFR 41.37(c)(1)(ii)

There are no related appeals or interferences with respect to the invention defined in this application.

STATUS OF CLAIMS
(37 CFR 41.37(c)(1)(iii))

Claims 1 - 6, 8, 10 and 12 have been cancelled.

Claims 7, 9 and 11 are pending in this application.

Claims 7, 9 and 11 have been finally rejected.

STATUS OF AMENDMENTS
(37 CFR 41.37(c)(1)(iv))

A REQUEST FOR RECONSIDERATION WITH AMENDMENT was filed on August 12, 2010 in response to the final rejection of April 12, 2010 along with a request for an extension of time.

By this REQUEST FOR RECONSIDERATION WITH AMENDMENT, claims 7 and 8 were combined.

An Advisory Action was issued on September 3, 2010 indicating that the amendment combining claims 7 and 8 would not be entered because it raises "new issues." The combination of two existing claims, where one depends from the other cannot raise a "new issue" because nothing new is introduced by the combination. The combination of claims 7 and 8 is, in effect, claim 8 in independent form. How can this procedure create a "new Issue?" It is respectfully submitted that it cannot. Accordingly, this appeal will proceed on the expectation that the combination of claims 7 and 8 will be considered in this appeal.

SUMMARY OF CLAIMED SUBJECT MATTER
(37 CFR 41.37 (c)(1)(v))
(References are to page and line of the specification)

The invention here relates to a method for updating device descriptions of field devices which field devices are used in process automation technology (pg. 1, lines 1 and 2). In order to enable the servicing of different field devices from a control unit, the functionality of the respective field device must be known to the control device. 2, lines 4 - 8). Normally, the device description is create4d by the field device manufacturer, and delivered to the user with te respective field device on, e.g., a disk (pg 2, lines 14 - 16). Device descriptions are periodically updated by the manufacturer and these updates are delivered to the user which are then subsequently installed using the application program (pg. 2, lines 19 - 22). The method of the present invention has as its object the means for updating device descriptions in field devices which is much simpler than any know method (pg. 2 , line 30 to pg. 3, line 2). The method of the invention includes the storing of device descriptions for field devices on a central server, and that, in a control unit, an application program, which requires corresponding device information for servicing a field device, downloads such from the server, following query of the device type of the field device (pg. 3, lines 5 - 10).

For this appeal, it is assumed, as noted above, that the combination of claims 7 and 8 will be permitted. Accordingly, only claim 7 as amended to include the subject matter of claim 8 will be mapped.

7. A method for updating device descriptions for different field devices (pg. 1, lines 1 and 2), sensors or actuator for determining, and influencing process variables in process automation technology , whereby the field devices are connected via a field bus (pg. 1, lines 4 - 11), whereby in each case a device description describes the functionality of the corresponding field device in a

standardized language (pg. 2, lines 8 - 10), and whereby a control unit and an external server are employed (pg. 3, lines 5 - 10), comprising the steps of:

storing preconfigured device descriptions for the field devices on a central server connected to the field bus via the internet (pg. 3, lines 5 - 10 and lines 30 - 31);

storing and running an application program in the control unit for servicing, configuring, parameterizing, or troubleshooting the field device (pg. 4, lines 3 - 5; and

downloading from the central server via the internet, by the application program in the control unit, the preconfigured device description of the corresponding field device to be serviced in the case that the preconfigured version of the device description of the field device is not available in the control unit (pg. 4, lines 12 - 22), wherein:

the application program queries the external server, in regular intervals, as to whether new device descriptions are available (pg. 4, lines 23 - 26).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
(37 CFR 41.37(c)(1)(vi))

In the final rejection, claims 7 - 9 and 11 were finally rejected under 35 USC 103(a) over Periman et al in view of Sharp et al. This is the only ground of rejection to be considered on this appeal.

ARGUMENT
(37 CFR 41.37(c)(1)(vii))

First of all, Perlman is directed to non-analogous art. See, *In re Deminski*, 230 USPQ 313 (Fed. Cir. 1986). *Deminski* announced a two-part test, namely: whether the reference is within the field of the present invention's

endeavor; and, if not, whether the reference is reasonably pertinent to the particular problem confronting the inventor of the present invention. It is respectfully submitted, that the answer to both of these questions for the present invention is no.

Perlman discloses a WebTV box that is able to download peripheral device drivers which are connected to the WebTV box by way of an expansion bus (col.5, lines 54 - 59). After system initiation, the WebTV box requests the device codes from all peripheral devices (col. 6, lines 12 - 15). The WebTV box then transmits the device codes to a WebTV server over a network connection. Once the corresponding drivers are identified, the WebTV server automatically downloads these device drivers to the WebTV client (col. 6, lines 51 - 54). This is not the present invention as claimed. The present invention as claimed does not involve TV servers and device drivers associated with TV servers. The field devices are not TV servers, nor are they analogous to them. The present invention deals with device descriptions that are periodically updated by the manufacturer. They are then sent to the user and the updated device description loaded to the central server. Downloading then occurs via the internet. In addition, according to the present invention, the application program periodically queries the external server to determine whether a new device description is available. Perlman does not teach this feature at all. In fact, neither Perlman nor Sharpe et al teach regularly querying an external server in order to check whether new device descriptions are available.
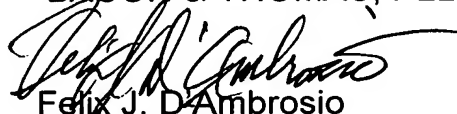
It must be concluded that Perlman is not "reasonable pertinent" to the subject field of the present invention.

CONCLUSION

In view of the above, it is respectfully submitted that claims 7, 9 and 11 should be allowed over the references of record and those applied.

Respectfully submitted

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Claims 1 - 6 (Cancelled).

7.   A method for updating device descriptions for different field devices, sensors or actuators for determining, and influencing process variables in process automation technology, whereby the field devices are connected via a field bus, whereby in each case a device description describes the functionality of the corresponding field device in a standardized language, and whereby a control unit and an external server are employed, comprising the steps of:

storing preconfigured device descriptions for the field devices on a central server connected to the field bus via the internet;

storing and running an application program in the control unit for servicing, configuring, parameterizing, or troubleshooting the field device; and

downloading from the central server via the internet, by the application program in the control unit, the preconfigured device description of the corresponding field device to be serviced in the case that the preconfigured version of the device description of the field device is not available in the control unit, wherein:

the application program queries the external server, in regular intervals, as to whether new device descriptions are available.

Claim 8 (Cancelled).

9.   The method as claimed in claim 7, wherein:

the device descriptions are device descriptions DDs.

Claim 10 (Cancelled)

11.   The method as claimed in claim 7, wherein:

the device descriptions in the external server are saved in respective

national languages.

Claim 12 (Cancelled)

EVIDENCE APPENDIX

There is no evidence being relied upon which was submitted pursuant to 37 CFR 1.130, 1.131 or 1.132.

RELATED PROCEEDINGS APPENDIX

There is no related proceeding being relied upon.

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